



FEDERAL TRADE COMMISSION
Agency Information Collection Activities;
Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Federal Trade Commission (FTC or Commission) is seeking public comment on its proposal to extend for an additional three years the Office of Management and Budget (OMB) clearance for information collection requirements contained in the Mail, Internet, or Telephone Order Merchandise Rule (MITOR). That clearance expires on July 31, 2022.

DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Request for Comments part of the SUPPLEMENTARY INFORMATION section below. Write “Paperwork Reduction Act Comment: FTC File No. P072108” on your comment, and file your comment online at <https://www.regulations.gov> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Jock Chung, 202-326-2984, Attorney, Enforcement Division, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW, Mail Drop CC-9528, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Title: Mail, Internet, or Telephone Order Merchandise Rule (MITOR or Rule), 16 CFR Part 435.

OMB Control Number: 3084-0106.

Type of Review: Extension of a currently approved collection.

Abstract: Generally, the MITOR requires a seller (or merchant) to: (1) have a reasonable basis for any express or implied shipment representation made in soliciting the sale (if no express time period is promised, the implied shipment representation is 30 days); (2) notify the buyer (or consumer) and obtain the buyer's consent to any delay in shipment; and (3) make prompt and full refunds when the buyer exercises a cancellation option or the seller is unable to meet the Rule's other requirements.

Likely Respondents: Businesses engaged in the sale of merchandise by mail, Internet or telephone.

Estimated Annual Hours Burden: 3,117,410 hours

Third Party Disclosure: $[(53,300 \text{ established businesses} \times 50 \text{ hours}) + (1,967 \text{ new entrants} \times 230 \text{ hours})] = 3,117,410 \text{ hours}$

Estimated Annual Cost Burden: \$82,269,450, which is derived from 3,117,410 hours x \$26.39/hour¹.

As required by section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), the FTC is providing this opportunity for public comment before requesting that OMB extend the existing clearance for the information collection requirements contained in the Commission's Health Breach Notification Rule.

Burden Estimates:

Estimated total annual hours burden: 3,117,410 hours

¹ The hourly wage rates for sales and related workers are updated from the 60-Day Federal Register notice and are based on mean hourly wages found at <https://www.bls.gov/news.release/ocwage.htm> ("Occupational Employment and Wages—May 2020," U.S. Department of Labor, released March 2021, Table 1 ("National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2020").

In its 2019 PRA-related Federal Register Notices² and corresponding submission to OMB, FTC staff estimated that established companies each spend an average of 50 hours per year on compliance with the Rule, and that new industry entrants spend an average of 230 hours (an industry estimate) for compliance measures associated with start-up.³ Thus, the total estimated hours burden was calculated by multiplying the estimated number of established companies x 50 hours, multiplying the estimated number of new entrants x 230 hours, and adding the two products.

No substantive provisions in the Rule have been amended or changed since staff's 2019 submission to OMB. Thus, the Rule's disclosure requirements remain the same. Moreover, the Commission received no public comments regarding the above-noted estimates; thus, staff will apply them to the current PRA burden analysis.

Since the prior submission to OMB, however, the number of businesses engaged in the sale of merchandise subject to the MITOR has increased. The most currently available data from the U.S. Census Bureau indicates that, between 2005 and 2019, the number of businesses subject to the MITOR grew from 15,924 to 43,465, or an average increase of 1,967 new businesses a year $[(43,465 \text{ businesses in 2019} - 15,924 \text{ businesses in 2005}) \div 14 \text{ years}]$.⁴ Assuming this growth rate continues from 2022 through 2025, the average number of

² 84 FR 10072 (Mar. 19, 2019); 84 FR 24512 (May 28, 2019).

³ Most of the estimated start-up time relates to the development and installation of computer systems geared to more efficiently handle customer orders.

⁴ Conceptually, this might understate the number of new entrants. Given the virtually unlimited diversity of retail establishments, it is very unlikely that there is a reliable external measure; nonetheless, as in the past, the Commission invites public comment that might better inform these estimates. For example, many online marketplace sellers that use Amazon.com's marketplace to sell to customers have agreements that provide that Amazon handles packaging and shipping the products to customers. Whether Amazon.com is also the entity responsible for sending customers delay notices when necessary could affect which entity is subject to MITOR disclosure requirements, Amazon or the individual marketplace seller.

established businesses during the three-year period for which OMB clearance is sought for the Rule would be 53,300:⁵

Year:	Established Businesses	New Entrants
2022-23	51,333	1,967
2023-24	53,300	1,967

⁵ As noted above, the existing OMB clearance for the Rule expires on July 31, 2022, and the FTC is seeking to extend the clearance for three years.

2024-25	55,267	1,967
Average:	53,300	1,967

In an average year during the three-year OMB clearance period, staff estimates that established businesses and new entrants will devote 3,117,410 hours to comply with the MITOR [(53,300 established businesses x 50 hours) + (1,967 new entrants x 230 hours) = 3,117,410]. The estimated PRA burden per seller to comply with the MITOR is likely overstated because much of the estimated time burden for disclosure-related compliance would arguably be incurred even absent the Rule. Over the years, industry trade associations and individual witnesses have consistently taken the position that providing buyers with notice about the status of their orders fosters buyer loyalty and encourages repeat purchases, which are important to marketers' success. In recent years, the demands of the Internet's online marketplace and its leading retailers such as Amazon.com, Walmart.com, and Ebay.com have driven many businesses to upgrade the information management systems to track and ship orders more effectively.⁶ These upgrades were primarily prompted by the industry's need to deal with growing buyer demand for merchandise that is timely shipped. Accordingly, most companies now provide updated order information of the kind required by the Rule in their ordinary course of business to meet buyer expectations regarding timely shipment, notification of delay, and prompt and full refunds.⁷

Estimated labor costs: \$82,269,450

⁶ Brian Baskin, "Amazon's Free Shipping Pushes Small Retailers, Delivery Firms to Compete," The Wall Street Journal, Apr. 8, 2017, *available at* <https://www.wsj.com/articles/amazons-free-shipping-pushes-small-retailers-delivery-firms-to-compete-1491649203>

⁷ Under the OMB regulation implementing the PRA, burden is defined to exclude any effort that would be expended regardless of any regulatory requirement. 5 CFR 1320.3(b)(2).

FTC staff derived labor costs by applying appropriate hourly cost figures to the burden hours described above. According to the most recent data available from the Bureau of Labor and Statistics,⁸ the mean hourly income for workers in sales and related occupations was \$26.39/hour. The bulk of the burden of complying with the MITOR is borne by clerical personnel along with assistance from sales personnel. Staff believes that the mean hourly income for workers in sales and related occupations is an appropriate measure of a direct marketer's average labor cost to comply with the Rule. Thus, the total annual labor cost to new and established businesses for MITOR compliance during the three-year period for which OMB approval is sought would be approximately \$82,269,450 (3,117,410 hours x \$26.39/hour). Relative to direct industry sales, this total is negligible.⁹

Request for Comments

Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of maintaining records and providing disclosures to consumers. All comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN

⁸ See Table 1, National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2020, at <https://www.bls.gov/news.release/ocwage.t01.htm>.

⁹ Considering that sales for "electronic shopping and mail order houses" grew from \$295 billion in 2011 to \$668 billion in 2019, staff estimates the annual mail, Internet, or telephone sales to consumers in the three year period for which OMB clearance is sought will average \$1.1 trillion. Thus, the projected average labor cost for MITOR compliance by existing and new businesses for that period would amount to 0.007% of sales.

THE FEDERAL REGISTER]. Write “Paperwork Reduction Act Comment: FTC File No. P072108” on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including the <https://www.regulations.gov> website.

Due to the public health emergency in response to the COVID-19 outbreak and the agency’s heightened security screening, postal mail addressed to the Commission will be subject to delay. We encourage you to submit your comments online through the <https://www.regulations.gov> website.

If you prefer to file your comment on paper, write “Paperwork Reduction Act Comment: FTC File No. P072108” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC–5610 (Annex J), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will become publicly available at <https://www.regulations.gov>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else’s Social Security number; date of birth; driver’s license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any “trade secret or any commercial or financial information which . . . is privileged or confidential” —as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2) —including in particular competitively sensitive

information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at www.regulations.gov, we cannot redact or remove your comment unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

Josephine Liu,

Assistant General Counsel for Legal Counsel.

